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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/648,429	08/25/2000	Jordan J. Louviere	M-9235 US	6023
22874	7590	10/19/2004	EXAMINER	
BRADLEY M GANZ, PC P O BOX 10105 PORTLAND, OR 97296			PRIETO, BEATRIZ	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Interview Summary	Application No. 09/648,429	Applicant(s) LOUVIERE ET AL.	
	Examiner Prieto Beatriz	Art Unit 2142	

All participants (applicant, applicant's representative, PTO personnel):

- (1) Prieto Beatriz (Examiner). (3) ____.
- (2) Gantz, B (Reg. No. 34,170). (4) ____.

Date of Interview: 12 October 2004.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____.

Claim(s) discussed: 83.

Identification of prior art discussed: Dreze.

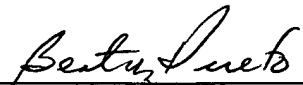
Agreement with respect to the claims f) ☐ was reached. g) ☒ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

 10/12/04
Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant request examiner to consider a proposed new claim (83) in the hopes that this may overcome the above mentioned prior art of record. The proposed amendment included indications as to how it would overcome the prior art of record by indicating portions of the prior that according to applicant's interpretation fail to teach proposed claim. Examiner review the proposed claimed, the prior art and the arguments presented. See attached a detailed response. Applicant's arguments seemed to be directed basically the automation aspect of the proposed claimed thereby sustaining that the prior art teach that a human and thereby the claimed limitations are performed manually, however examiner indicated that the portions cited do not support this interpretation and that even if the do, converting a manual operation into an automatic one is not sufficient to overcome the prior art as set forth by the courts (see MPEP 2144). Examiner suggested applicant to follow previous recommendation provided on the last office action..

Telephonic Interview

1. Applicant request examiner's consideration of a proposed amendment to overcome the Dreze prior art of record.

2. Presented claim new claims 83: An automated system for experimentation, the system being configured to: automatically generate and allocate a set of treatments from a predefined set of content elements, according to experiment rules; collect observation data of user behavior to the set of treatments and determine the effect of each content element on user behavior; and automatically determine and allocate a treatment from the set of content elements to achieve a desired objective based on the determination of the effects of the content elements.

3. Applicant's arguments are that neither Dreze nor any other cited prior art teaches automatically generates treatments from a predefined set of content elements to test user behavior. Nor does the prior art teach automatically determining treatments to achieve desired objectives based on the determined effectiveness of content elements. Dreze's system, according to applicant teaches only manual creation of different web page versions based on the citation: "[i]n this case, in accordance with the design of Table 2 eight test concept stimuli, including the current Web site configuration, defined as a reference case, were developed and installed on the Web site's server." (Dreze, pp. 13-14).

In response to this argument, examiner notes applicant's interpretation, however cited portion, does not recite "the test stimuli is only manual creation of different web page versions". Applicant further does not provide factual evidence as to where any other cited prior art (see PTO-892 pages 1-4 mailed 08/10/04) fails to teach automatically generating treatments from a predefined set of content elements to test user behavior, in order to support the allegation that any other cited prior art fails to teach proposed claim limitation.

4. Applicant further argues that prior art does not teach proposed claim limitation because, Dreze relies on a human decision maker to evaluate different variations of the web site. Specifically, based on the citation: "[A] decision maker can easily evaluate alternative Web site configurations, by specifying specific levels of a proposed Web site's attributes". (Dreze, p.26.)

In response to this argument, examiner notes applicant's interpretation, however cited portion, does not recite "that a human decision maker to evaluate different variations of the web site".

5. Applicant further argues prior art does not teach proposed claim limitation because, Dreze's Web site configuration depends on the Web site owner's decision (Dreze, p.27).

In response to this argument, examiner consider cited portion which states: "

Obviously, subject to certain Web site capacity constraints, site configurations can achieve higher values with respect to both *Time Spend* and *Number of Pages Accessed* (i.e. effectiveness measurements) by site visitors are more desirable from a Web site owner's point of view. This is because the site owner should desire to maximize both the breadth and depth of exposure to a Web site's promotional content. These configurations should suggest greater attractiveness from the viewpoint of Web surfers as well. Thus, as we move in a northeast direction in Figure 5, we can find more attractive site configurations. In particular, the most desirable Web configurations are those whose coordinates lie on the outermost portions of the graph." (Dreze, p. 26-27).

The cited portion states what it states, site configurations can achieve higher values with respect to both Time Spend and Number of Pages Accessed (i.e. effectiveness measurements) by site visitors are more desirable from a Web site owner's point of view. It does not state, that the Web site owner generate and allocate a set of treatments from a predefined set of content elements, it states that the Web site owner determines which of the effective measure are more desirable from the owner's point of view.

However, examiner noted that in fact the Dreze teaches on page 14, first paragraph that: "Test stimuli including design of Table 2 (i.e. design matrix for test web Site concept), eight actual alternative Web site versions, including their corresponding Web pages and design contents, were developed and installed on the site's server by means of specifically designed software".

Further, it is noted that AUTOMATING A MANUAL ACTIVITY would not lead to patentable claims (see MPEP 2144.04) In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958). The court held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art.

6. Applicant's arguments have been fully been considered but not found persuasive. However, examiner's suggestion to overcome the prior may be considered.

Peter L. Lueb
Examiner *EL*